



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 220103-0001; RTID 0648-XX077]

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2022 Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary final rule; adjustment of specifications.

**SUMMARY:** In accordance with the regulations implementing the Atlantic Herring Fishery Management Plan, this action adjusts the 2022 harvest specifications for the herring fishery. Specifically, it adjusts catch limits in the four herring management areas (Areas 1A, 1B, 2, and 3) to account for catch overages and underages in those areas during 2020. This action is necessary to help prevent overfishing ensure and support the harvest of optimum yield consistent with the requirements of the Atlantic Herring Fishery Management Plan.

**DATES:** Effective [*insert date of filing for public inspection with the FEDERAL REGISTER*], through December 31, 2022.

**ADDRESSES:** Copies of supporting documents, including Framework 8 to Atlantic Herring Fishery Management Plan (FMP), are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281-9315, or online at:

<https://www.nefmc.org> and

<https://www.fisheries.noaa.gov/species/atlantic-herring#management>.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy

Analyst, 978-281-9272.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Atlantic herring harvest in the United States is managed under the Atlantic Herring FMP developed by the New England Fishery Management Council and approved by NMFS. The FMP divides the herring annual catch limit (ACL) among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component.

NMFS issued a final rule that implemented Amendment 4 to the FMP (76 FR 11373; March 2, 2011) to address ACL and accountability measure (AM) requirements. As a way to account for ACL/sub-ACL overages in the herring fishery, Amendment 4 established an AM that requires NMFS to deduct any ACL/sub-ACL overages from the corresponding ACL/sub-ACL of the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the **Federal Register** prior to the start of the fishing year, if possible.

NMFS published a final rule implementing Framework 2 to the FMP and the 2013-2015 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allowed for the carryover of unharvested catch (*i.e.*, underages) in the year following catch determination. Provided that annual total catch does not exceed the ACL, up to 10 percent of each sub-ACL may be carried over

and added to the following year's sub-ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the ACL.

NMFS published the 2021-2023 specifications for the herring fishery in Framework 8 to the FMP on April 1, 2021 (86 FR 17081). Framework 8 also revised the carryover provision to reduce the amount of carryover available to be added to sub-ACLs in 2022. Specifically, it reduced the 2020 sub-ACL percentages that could be carried over and added to the 2022 sub-ACLs from 10 percent to 5 percent. Because carryover does not increase the ACL, the carryover of 2020 underages to the relatively lower sub-ACLs in 2022 could potentially restrict fishing later in the year in areas not receiving carryover if the sub-ACLs in areas with carryover are harvested early in the year.

#### **Provisions Implemented Through This Final Rule**

NMFS recently completed the catch accounting for 2020 and determined there were catch overages in Areas 1A and 1B and catch underages in Areas 2 and 3. To account for the overages, this action deducts the 2020 catch overages in Areas 1A and 1B from the 2022 ACL and sub-ACLs for Areas 1A and 1B. To account for the underages, this action carries over unharvested 2020 catch to the 2022 herring sub-ACLs in Areas 2 and 3. The carryover equals the amount of each area's underage or up to 5 percent of the 2020 sub-ACL, whichever is less. Table 1 provides catch details for 2020 and the corresponding adjustments for the 2022 sub-ACLs. Because the adjusted Area 1B sub-ACL is zero, none of the sub-ACL is available for harvest in 2022 and a vessel may not fish for, possess, or retain herring from Area 1B for the remainder of the 2022 fishing year. A vessel may transit Area 1B with herring on board provided herring were caught in an area where the sub-ACL is available for harvest and gear is stowed and not available for immediate use.

**Table 1. Herring Catch Limits, Catch, and Carryover (mt)**

	Final 2020 sub-ACLs	2020 Catch	2020 Overages (+) Underages (-)	Allowable Carryover (up to 5 percent*)	Initial 2022 sub-ACLs	Adjusted 2022 sub-ACLs
Area 1A	4,244	4,353	+ 109	NA	1,184	1,075
Area 1B	483	831	+ 348	NA	176	0**
Area 2	3,120	353	- 2,767	156	1,139	1,295
Area 3	4,378	4,054	- 324	219	1,598	1,817
ACL***	12,224	9,591	NA	NA	4,098	3,813

\* Carryover is based on 5 percent of the initial 2020 sub-ACLs: Area 1A = 3,244 mt; Area 1B = 483 mt; Area 2 = 3,120 mt; and Area 3 = 4,378 mt. These initial sub-ACLs were adjusted inseason to become the final 2020 sub-ACLs.

\*\* Because the 2020 overage in Area 1B exceeds the initial 2022 Area 1B sub-ACL, the adjusted 2022 Area 1B sub-ACL is zero.

\*\*\* The ACL is reduced by overages but not increased by carryover; therefore, the adjusted 2022 ACL is only affected by the 2020 overages in Areas 2 and 3.

NMFS calculated the amount of herring landings in 2020 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTR) and vessel monitoring system (VMS) reports (Federal and states of Maine and Massachusetts) of herring landings. NMFS generally uses dealer reports to estimate herring landings; however, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10 percent or more, NMFS assumes the dealer report for that trip was in error and uses the VTR report instead. NMFS assigns herring landings to individual herring management areas using VMS reports or latitude and longitude coordinates from VTR reports when a VMS report is not available. NMFS uses recent fishing activity to assign landings to a management area if dealer reports do not have a corresponding VTR or VMS catch report.

NMFS estimates herring discards by extrapolating discards from herring trips observed by the Northeast Fisheries Observer Program to all herring trips (observed and unobserved) according to gear and herring management area. Because research set-aside (RSA) is removed from management area sub-ACLs at the beginning of the fishery year, when appropriate, NMFS tracks RSA catch but does not count it towards the herring sub-ACLs. No RSA is specified for 2022.

## Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action. Notice and comment are impracticable and contrary to the public interest because a delay would potentially impair achievement of the management plan's objectives of preventing overfishing and achieving optimum yield by impairing a vessels' ability to harvest available catch allocations. Allowing for prior notice and public comment on this adjustment is also impracticable because the adjustments need to be announced prior to the January 1 start of the fishing year, or as soon as possible thereafter. Further, this is a nondiscretionary action required by provisions of Amendment 4 and Frameworks 2, 6, and 8, which were previously subject to public notice and comment. The adjustments required by these regulations are formulaic. This action simply effectuates these mandatory calculations. The proposed and final rules for Frameworks 2 and 6 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLs based on final catch. Frameworks 2 and 8, specifically, provided prior notice of the need to distribute carryover catch. These actions provided a full opportunity for the public to comment on the substance and process of this action.

For the same reasons as noted above, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make the rule effective upon publication in the **Federal Register**. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to adjust the specifications prior to the January 1 start of the fishing year, or as soon as possible thereafter. Management Areas 1B, 2, and 3 open on January 1 and Area 1A opens on June 1. The adjustments in this action reduce catch in Areas 1A and 1B, in particular reducing the

Area 1B sub-ACL to zero, and increase catch in Areas 2 and 3. Putting in place the adjusted specifications as soon as possible will provide the fleet with an opportunity to develop their business plans in sufficient time to avoid an overharvest in Area 1B and facilitate the harvest of additional catch in Areas 2 and 3.

This action is required by 50 CFR part 648, subpart K, and is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2022.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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